



U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 8 – SUPERFUND AND EMERGENCY MANAGEMENT DIVISION

1595 Wynkoop Street

Denver, CO 80202-1129

## **MEMORANDUM**

SUBJECT: Responsiveness Summary for Idaho Pole Co. Scout Prospective Purchaser Agreement  
FROM: Roger Hoogerheide, Remedial Project Manager  
TO: FILE  
DATE: 2022-06-29  
EPA ID: MTD00623227688  
STATUS: FINAL

### **Introduction**

On May 13, 2022, 87 Fed. Reg. 29311, EPA published a notice of proposed agreement and request for public comment in connection with a CERCLA Administrative Settlement Agreement for Removal Action and Payment of Response Costs between the United States on behalf of the Environmental Protection Agency (EPA), the State of Montana (State) through the Montana Department of Environmental Quality (DEQ), and the prospective purchaser, Scout DAC, LLC (Purchaser), Idaho Pole Co. Superfund Site (Site), Bozeman, Montana (CERCLA Administrative Settlement Agreement). This notice was intended to inform the public that EPA and DEQ intended to enter into an administrative settlement agreement for removal action and payment of certain response costs for a property which encompasses a portion of the Site.

The CERCLA Administrative Settlement Agreement is subject to public comment, after which the United States may withhold its consent or seek to modify this Settlement if comments received disclose facts or considerations that indicate that this Settlement is inappropriate, improper or inadequate. The notice also provided a 30-day public comment period on the proposed agreement. The closing date for public comment on the notice was June 13, 2022. EPA received three written comments. These comments are available in EPA's Superfund information repository.

### **Responsiveness Summary**

EPA has prepared this Responsiveness Summary to respond to public comments submitted to EPA during the 30-day public comment period regarding the CERCLA Administrative Settlement Agreement. The comments are summarized below and available at <http://www.regulations.gov>, Docket ID No. EPA-R08-SFUND-2022-0328, with the supporting materials under document type "Public Submissions", and at the information repositories at the following addresses: U.S. EPA Helena Records Center, 10 W. 15<sup>th</sup> Street, Suite 3200, Helena, MT 59626. Below is EPA's response to various comments. Based on the record, the United States had determined that the comments received do not disclose facts or considerations that indicate that the CERCLA Administrative Settlement Agreement is inappropriate, improper or inadequate.

## **1. Airborne Contaminants**

- ... EPA has failed to address in the Agreement and supporting documents, the impact of airborne contamination particles when allowing the removal of treated soils and work to be completed pursuant to the Removal Work Plan, which includes additional cover and composite caps. Such construction activities will airborne the particles that are already capped and contained. There is no public process to ensure that the Sampling and Analysis plan will address airborne contaminants ...
- ... Will there be future opportunities for public review and comment that might make a difference for eliminating airborne CAC's in this process?

### **Response**

EPA will follow federal and state requirements for managing and disposing of Waste Material. This includes Resource Conservation and Recovery Act requirements for treatment, storage and disposal of hazardous waste. They also include Clean Air Act air quality standards prohibiting causing or contributing to concentrations of particulate matter in the ambient air. Finally, such requirements address air monitoring requirements. Compliance with these laws is required under Section XI (Compliance with Other Laws) of the CERCLA Administrative Settlement Agreement with Purchase. EPA will work closely with DEQ in reviewing and commenting on the proposed Sampling and Analysis Plan. EPA will also hold public meetings to inform the community about how the Purchaser intends to manage airborne contaminants during on-Site construction.

## **2. Future Opportunities for Public Comment**

- ... Deferring the sampling and analysis plan after the City of Bozeman Site Plan approval, which does not allow for public comment, ensure the impacted landowners are excluded from the public process and have no voice ...
- ... Please require the treated soils are “capped” to ensure particles will not be blown onto adjacent properties during storage ...

### **Response**

EPA will work closely with DEQ and the community while reviewing and commenting on the proposed Sampling and Analysis Plan. EPA also will hold public meetings to inform the community about how the Purchaser intends to manage airborne contaminants during on-Site construction, including the staging of Waste Material prior to on-Site disposal.

## **3. Waste Material Migration**

- ... Please continue to include the water gradient requirements to limit the migration of the particles ...

## **Response**

EPA will follow federal and state requirements for managing and disposing of Waste Material to preserve the quality of state waters. Compliance with these laws is required under Section XI (Compliance with Other Laws) of the CERCLA Administrative Settlement Agreement with Purchaser. EPA will work closely with DEQ and community while reviewing and commenting on the proposed Sampling and Analysis Plan. EPA will also hold public meeting to inform the community about how the Purchaser intends to limit the migration of contaminants into state waters.

## **4. Local Health Department Role**

- ...There is no mention of any role for the City/County Health Department. Will they be involved in any capacity throughout this process? ...

## **Response**

EPA will work closely with DEQ on implementation of the CERCLA Administrative Settlement Agreement with Purchaser. Although the federal Superfund law does not create a formal role for local health departments, EPA will keep the local health authorities as well as the community apprised of implementation activities, including how the Purchaser intends to manage airborne contaminants during on-Site construction. This does not limit the local City/County Health Department's role in new construction in Bozeman/Gallatin County under local or state law.

## **5. Contaminants of Concern Explanation**

- ... The contaminants of concern are pentachlorophenol (PCP), polycyclic aromatic hydrocarbons (PAHs), polychlorinated dibenzo-pdioxins and polychlorinated dibenzofurans (dioxins/furans). It would be helpful for the neighbors to have spelled out exactly what the concern is with these contaminants, and what the stakes are for the residents nearby? (A meeting on this topic was promised in 2021, but never happened). Transparency is of utmost concern with these toxins ...

## **Response**

EPA is mindful of community concerns about the contaminants of concern, including dioxins/furans. EPA will hold public meetings to inform the community about implementation of the federal and state requirements for managing and disposing of Waste Material, including potential effects that these contaminants of concern may have on human health and the environment.

## **6. Public Availability of Progress Reports and Final Report**

- ... Will the public have access to progress reports? Ideally, these reports would be submitted to the Northeast Neighborhood Association in a timely fashion, to be shared with the neighborhood residents ...
- ... Will the Final Report be made public in a timely fashion?

### **Response**

The Purchaser is required to submit to EPA and DEQ progress reports under the CERCLA Administrative Settlement Agreement with the Purchaser. Progress reports and the final report are public records. EPA will post progress reports on its website and provide them to the Northeast Neighborhood Association. EPA has asked and the Purchaser has agreed to voluntarily provide periodic updates to the Northeast Neighborhood Association.

## **7. Agency Oversight**

- ... Does another person [other than the current EPA remedial project manager] even exist within the EPA who is equally well versed in the issues with this site? ...
- ... Is it possible for EPA to assess the credentials and approve or disapprove of every contractor and subcontractor? ...

### **Response**

The federal National Contingency Plan vests authority in the EPA remedial project manager to administer the cleanup of the Site. EPA is working closely with DEQ to oversee the work at the Site. The Purchaser's environmental consultant also has substantial, site-specific Superfund cleanup experience.

EPA only has a role in approving the Purchaser's environmental contractors related to Superfund cleanup work. This role does not extend to contractors performing other types of work including, for example, building and redevelopment activities.

## **8. Business Confidentiality Claims**

- ... How can the public know if pertinent health information is being hidden? What are the safeguards for the public if a business can hide information? ...

### **Response**

Environmental data and sampling results generally do not qualify as business confidential or proprietary claims. Federal law defines a detailed process for a potentially responsible party or other party to assert a business confidential or proprietary claim. (CERCLA sections 104(e)(7)(E) and (F), 42 U.S.C. § 9604(e)(7)(E) and F; RCRA section 3007(b), 42 U.S.C. § 6927(b); 40 C.F.R. 2.203(b)). EPA's release of information marked, "trade secret," "proprietary," or "company confidential" is governed by the procedures in 40 C.F.R. Part 2, 41 Fed. Reg. 36,902 (1976)

(amended at 43 Fed. Reg. 40,000 (1978), and 50 Fed. Reg. 51,661 (1985)). EPA has a process for adjudicating business confidential or proprietary claims.

## **9. Potentially Responsible Party BNSF's Role**

- ... The PPA should clarify BNSF's [Burlington Northern Santa Fe's] predecessors' role at the IPC Property relative to IPC's role ...

### **Response**

The recitation of facts pertaining to Site background is not intended to be exhaustive, but rather to present facts pertinent to the CERCLA Administrative Agreement with Purchaser.

## **10. Potentially Responsible Party BNSF's Contribution to Site Cleanup**

- ... BNSF has contributed to significant cleanup work that has been completed at the Site and is consistent with the remedy selected in the ROD ...

### **Response**

Substantial cleanup work has been performed at the Site since issuance of the Administrative Order for Remedial Design/Remedial Action, EPA Docket No. CERCLA VIII-93-26. The recitation of facts pertaining to Site background is not intended to be exhaustive, but rather present facts pertinent to the CERCLA Administrative Agreement with the Purchaser.

## **11. Integrity of the Remedy**

- ... Development at the IPC Property must not impair the remedy and must be protective of human health and the environment. The Purchaser must be responsible for all cleanup work and costs resulting from any development at the IPC Property ...

### **Response**

Section VIII (Property Requirements) of the CERCLA Administrative Agreement with the Purchaser addresses property requirements. Specifically, Paragraph 44 governs access, appropriate care, and non-interference. Consistent with federal law, the CERCLA Administrative Settlement Agreement with Purchaser requires the Purchaser to, among other requirements, exercise appropriate care with respect to hazardous substances found at the Property. The CERCLA Administrative Settlement Agreement with Purchaser also requires the Purchaser to refrain from using such Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material. These requirements are intended to ensure that development will not interfere with the protectiveness of the remedy. Moreover, the Work that the Purchaser has committed to undertake will strengthen the existing soils remedy by consolidating on-site Waste Material and enhancing the cover for the Treated Soils Area.

## 12. Termination of 1993 EPA Order

- ... EPA should terminate the AO before signing the PPA ...

### Response

Commenter requests that EPA terminate the 1993 Administrative Order for Remedial Design/Remedial Action, EPA Docket No. CERCLA VIII-93-26, before signing the CERCLA Administrative Settlement Agreement with Purchaser. Commenter presents no reason to support its request. The 1993 Administrative Order for Remedial Design/Remedial Action is a separate and distinct CERCLA administrative order from the CERCLA Administrative Settlement Agreement with Purchaser.

On May 31, 2022, EPA issued a notice titled, “Termination of [1993] Administrative Order for Remedial Design/Remedial Action,” EPA Docket No. CERCLA VIII-93-26. The 1993 Administrative Order for Remedial Design and Remedial Action is being superseded by a CERCLA Administrative Settlement Agreement and Order on Consent to conduct groundwater remediation to address residual contamination at the Site. The 1993 Administrative Order for Remedial Design/Remedial Action will be deemed terminated on the date when EPA issues written notice to potentially responsible party, Idaho Pole Co., that EPA has fully executed the pending Administrative Settlement Agreement and Order on Consent between EPA and Idaho Pole Co.

## 13. Pending CERCLA Administrative Settlement between EPA and Potentially Responsible Party Idaho Pole Co.

- ... The Administrative Settlement Agreement and Order on Consent for In Situ Amendments in Support of Focused Feasibility Study (“ASAOC”) should require IPC to complete any remaining work under the ROD and BNSF should have an opportunity to review and comment on the ASAOC before it is executed ...

### Response

The Administrative Settlement Agreement and Order on Consent for In Situ Amendments in Support of Focused Feasibility Study (“ASAOC”) is a separate and distinct CERCLA administrative order from the CERCLA Administrative Settlement Agreement with Purchaser. EPA will follow the standard notice and public comment requirements for an CERCLA administrative settlement agreement and order on consent with a potentially responsible party.